

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Consumer Service

#### 7 CFR Part 226

RIN 0584-AB19

#### Child and Adult Care Food Program: Overclaim Authority

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes an amendment to the Child and Adult Care Food Program (CACFP) regulations which would explicitly authorize the Department and State agencies to assess overclaims against institutions that fail to abide by CACFP recordkeeping requirements. This authority has been successfully challenged in several judicial rulings on the grounds that such authority was not specifically established in program regulations. This rule serves to affirm the Department's authority to assess overclaims for recordkeeping infractions and to clarify any regulatory ambiguities or inconsistencies regarding overclaims authority.

**DATES:** To be assured of consideration, comments must be postmarked no later than February 5, 1996.

**ADDRESSES:** Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the address above during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie or Mr. Edward Morawetz at the above address or by telephone at 703-305-2620.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

##### Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). The Administrator of the Food and Consumer Service has certified that this action will not have a significant economic impact on a substantial number of small entities. There will be no significant impact because this rule represents only a clarification of current procedures.

##### Executive Order 12372

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published in 48 FR 29114, June 24, 1983).

##### Information Collection

This proposed rule contains no new information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 226 were approved by the Office of Management and Budget under Control Number 0584-0055.

##### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions. In the Child and Adult Care Food Program, the administrative procedures are set

forth under the following regulations:

(1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR Part 3015.

##### Background

The Child and Adult Care Food Program (CACFP) is authorized by section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766). Section 17(n) of that Act stipulates that "States and institutions participating in the program shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section." Furthermore, the CACFP regulations include a number of requirements relating to recordkeeping; Section 226.7(m) requires State agencies to establish standards for institutional recordkeeping; Section 226.15(e) prescribes the minimum recordkeeping requirements for institutions in the CACFP; Section 226.10(c) requires institutions to certify that records are available to support reimbursement claims; and Section 226.10(d) establishes a timeframe for record retention. Moreover, Section 226.6(f)(1) requires that the Program agreement between the State agency and each institution stipulate that each participating institution must agree to comply with all regulatory requirements including these recordkeeping requirements. Finally, the importance with which the Department views an institution's recordkeeping responsibilities is found in Section 226.6(c)(4), where failure to maintain adequate records is specifically listed as a serious deficiency for which termination of an institution's participation may be appropriate.

On numerous occasions, the Department and State agencies have used the authority in the regulatory provisions cited above to recover funds paid to institutions which did not have records necessary to support claims for reimbursement. However, this authority has been successfully challenged in court cases in Arkansas and California. In both cases, assessment of overclaims against institutions which were based on inadequate or missing records were

overturned by the courts on the grounds that the CACFP regulations do not specifically authorize overclaims for those reasons.

In recognition of the fact that State agencies may review an institution's performance under the CACFP as infrequently as once every four years, effective administration depends on access to complete documentation of program activities for an entire review period. Such documentation is necessary for the Department and State agencies to maintain a check on possible fraud, abuse and mismanagement in the Program. Without proper records concerning the content and number of meals served, and documentation of participants' income category, there is no evidence that such participants were fed in accordance with basic program requirements, and no assurance that program funds were spent as mandated in the law and in the regulations.

Accordingly, the Department is proposing to amend Sections 226.14(a), 226.15(e) and 226.16(e), and to add new Sections 226.17(c), 226.18(g), 226.19(c), and 226.19a(c) to the CACFP regulations to clarify that failure to adhere to CACFP recordkeeping requirements may be used as a basis for State agencies to assess overclaims against sponsors.

This rulemaking also contains a technical change to the CACFP regulations which would transfer two recordkeeping responsibilities established for sponsoring organizations from Section 226.16(e) to Section 226.15(e).

Accordingly, the Department proposes to amend Sections 226.15(e) and 226.16(e) by moving Section 226.16(e) (1)-(2) to Section 226.15(e) under redesignated paragraphs (10) and (12).

#### List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, infants and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is proposed to be amended as follows:

### PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.14, the introductory text of paragraph (a) is amended by adding a new sentence after the first sentence to read as follows:

#### § 226.14 Claims against institutions.

(a) \* \* \* State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part. \* \* \*

\* \* \* \* \*

3. In § 226.15:

a. The introductory text of paragraph (e) is revised;

b. Paragraphs (e)(10), (e)(11) and (e)(12) are redesignated as paragraphs (e)(11), (e)(13) and (e)(14);

c. New paragraphs (e)(10) and (e)(12) are added;

d. Newly redesignated paragraph (e)(11) is amended by removing the word "and" at the end of the paragraph;

e. Newly redesignated paragraph (e)(13) is amended by adding the word "and" after the semicolon at the end of the paragraph; and

f. Newly redesignated paragraph (e)(14) is amended by removing the first word "Maintain" from the paragraph.

The additions and revisions specified above read as follows:

#### § 226.15 Institution provisions.

\* \* \* \* \*

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all necessary program records. Failure to maintain such records shall be grounds for denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained:

\* \* \* \* \*

(10) Information concerning the dates and amounts of disbursement to each child care facility or adult day care facility with which it has a program agreement;

\* \* \* \* \*

(12) Information concerning the location and dates of each child care or adult day care facility review, any problems noted, and the corrective action prescribed and effected;

\* \* \* \* \*

4. In § 226.16, paragraph (e) is revised to read as follows:

#### § 226.16 Sponsoring organization provisions.

\* \* \* \* \*

(e) Each sponsoring organization shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e) and any recordkeeping requirements established by the State agency in order to justify the administrative payments made in

accordance with § 226.12(a). Failure to maintain such records shall be grounds for the denial of reimbursement for the costs associated with those records during the period covered by the records in question.

\* \* \* \* \*

5. In § 226.17, a new paragraph (c) is added to read as follows:

#### § 226.17 Child care center provisions.

\* \* \* \* \*

(c) Each child care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

6. In § 226.18, a new paragraph (g) is added to read as follows:

#### § 226.18 Day care home provisions.

\* \* \* \* \*

(g) Each day care home shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question.

7. In § 226.19, a new paragraph (c) is added to read as follows:

#### § 226.19 Outside-school-hours care center provisions.

\* \* \* \* \*

(c) Each outside-school-hours care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

8. In § 226.19a, a new paragraph (c) is added to read as follows:

#### § 226.19a Adult day care center provisions.

\* \* \* \* \*

(c) Each adult day care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall

be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

Dated: November 27, 1995.

William E. Ludwig,  
*Administrator.*

[FR Doc. 95-29569 Filed 12-4-95; 8:45 am]

BILLING CODE 3410-30-U

## **Agricultural Marketing Service**

### **7 CFR Part 985**

[Docket No. AO-79-2; FV95-985-4]

#### **Spearmint Oil Produced in the Far West; Proposed Amendment of Marketing Order No. 985**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of order filed on proposed rulemaking.

**SUMMARY:** The purpose of this document is to inform all interested parties that an order was filed by the presiding Administrative Law Judge in this matter stating that briefs, proposed findings, and conclusions may be filed no later than December 22, 1995. A hearing to consider amendments to the Federal marketing order covering the handling of spearmint oil grown in the Far West and to receive evidence on whether portions of the States of California and Montana should continue to be regulated under the order, was held on November 14, 1995, in Spokane, Washington.

**DATES:** Proposed findings and conclusions and written arguments or briefs must be filed by December 22, 1995.

**ADDRESSES:** Proposed findings and conclusions and written arguments or briefs should be sent to the office of the hearing clerk, U.S. Department of Agriculture, Room 1079-South Building, Washington, DC 20250-9200.

#### **FOR FURTHER INFORMATION CONTACT:**

(1) Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523-S, AMS, USDA, PO Box 96456, Washington, DC 20090-6456; telephone number (202) 720-5127.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon, 97204; telephone: (503) 326-2725.

**SUPPLEMENTARY INFORMATION:** A public hearing was held November 14, 1995, in Spokane, Washington to receive evidence on whether the marketing order regulating the handling of spearmint oil produced in the Far West should be amended to exclude from the area of regulation portions of the States of California and Montana.

Pursuant to the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900), the Administrative Law Judge assigned to conduct the proceeding established December 22, 1995, as the date by which proposed findings and conclusions and written arguments or briefs must be filed. Any proposed findings and conclusions and written arguments or briefs must be based upon the evidence received at the hearing. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to, and will not be considered in determining whether the marketing order should be amended.

Authority: 7 U.S.C. 607-674.

Dated: November 30, 1995.

Sharon Bomer Lauritsen,  
*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-29571 Filed 12-4-95; 8:45 am]

BILLING CODE 3410-02-P

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[CO-24-95]

RIN 1545-AT51

#### **Consolidated Groups—Intercompany Transactions and Related Rules; Hearing**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Change of date and time for public hearing on proposed regulations.

**SUMMARY:** This document changes the date and time of the public hearing on proposed regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

**DATES:** The public hearing has changed to Monday, December 11, 1995, beginning at 1:00 p.m.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building,

1111 Constitution Avenue NW. Washington, DC. Submit requests to speak and outlines of oral comments to CC:DOM:CORP:R [CO-24-95], room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

#### **FOR FURTHER INFORMATION CONTACT:**

Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-6803 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register for Tuesday, July 18, 1995 (60 FR 36755), announced that the Service would hold a public hearing on proposed regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group on Thursday, November 16, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date and time of the public hearing has changed. The hearing is scheduled for Monday, December 11, 1995, beginning at 1:00 p.m. The requests to speak and outlines of oral comments were due October 26, 1995. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

The service will prepare an agenda showing the scheduling of the speakers and make copies available free of charge at the hearing.

Cynthia E. Grigsby,  
*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95-29510 Filed 12-4-95; 8:45 am]

BILLING CODE 4830-01-P

## **DEPARTMENT OF THE INTERIOR**

### **Office of Surface Mining Reclamation and Enforcement**

#### **30 CFR Part 913**

[SPATS No. IL-089-FOR]

#### **Illinois Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Illinois